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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 HATEM M. SHALABI and PYRAMID  
9 GOLD, INC.,

10 Plaintiffs,

11 v.

12 ATLANTIC RICHFIELD COMPANY, et  
13 al.,

14 Defendants.

CASE NO. C11-505BHS

ORDER

15 This matter comes before the Court on Plaintiffs Hatem M. Shalabi and Pyramid  
16 Gold, Inc.'s ("Plaintiffs") motion for remand (Dkt. 15) and Defendants Atlantic Richfield  
17 Company ("ARCO"), BP Corporation North America, Inc., BP Products North America,  
18 Inc., and BP West Coast Products, LLC's ("Defendants") motion to dismiss and strike the  
19 amended complaint (Dkt. 16). The Court has reviewed the briefs filed in support of and in  
20 opposition to the motions and the remainder of the file and hereby denies the motion to  
21 remand and grants the motion to strike the amended complaint for the reasons stated  
22 herein.

23 **I. PROCEDURAL HISTORY**

24 On March 1, 2011, Plaintiffs filed a complaint against Defendants in the Superior  
25 Court of the State of Washington in and for the County of Pierce. Dkt. 2, Declaration of  
26 Douglas C. Berry, Exh. A. On March 22, 2011, Defendants removed the action to this  
27 Court. Dkt. 1.  
28

1 On April 15, 2011, Plaintiffs filed an amended complaint that added Defendants  
2 Delta Environmental Consultants, Inc., Markham Hurd, and Matthew Miller (“Delta  
3 Defendants”). Dkt. 14 (“Amended Complaint”).

## 4 **II. FACTUAL BACKGROUND**

5 Plaintiffs allege that, in December of 2004, they entered into an agreement to  
6 purchase a gasoline/diesel station from ARCO. Amended Complaint, ¶ 3.1. Plaintiffs  
7 also allege as follows:

8 By letter dated December 10, 2004, Defendants informed Plaintiffs that there  
9 was no contamination at the facilities purchased by Plaintiffs. Plaintiffs  
10 relying on those representations of no contamination proceeded to execute  
11 the agreements with Defendants based upon a good faith belief that  
12 Defendants had provided accurate information on the status of  
13 contamination. Defendants further represented that they had retained  
14 Defendant Delta Environmental Consultants, Inc. to perform environmental  
15 testing and that their work confirmed no contamination. Defendant Hurd was  
16 the Technical Coordinator for the project and Defendant Miller was the  
17 Project Manager. Defendant Delta Environmental Consultants, Inc.,  
18 Defendant Hurd and Defendant Miller (hereinafter “Delta Defendants”)  
19 knew that their investigation and report was going to be relied upon to  
20 support a sale of the real estate. Delta Defendants allowed the BP  
21 Defendants to dictate what information was obtained about the true nature of  
22 the contamination and what information would be contained in the report.  
23 Delta Defendants were therefore willing participants in the failure to fully  
24 disclose the true nature of the property and what contamination was truly  
25 there. Put another way, Delta Defendants participated in an effort to mislead  
26 Plaintiff into thinking that there was no contamination or no significant  
27 contamination on the property.

19 *Id.* 3.2.

20 Defendants contend that the report prepared by Delta Defendants explicitly stated  
21 that its report was intended for use only by ARCO and that the Delta Defendants would  
22 not be liable for unauthorized use by third parties. Dkt. 17 at 2-3.

## 24 **III. DISCUSSION**

25 Once removal has occurred, a district court has discretion in determining the  
26 propriety of post-removal amendments to a complaint that would destroy subject matter  
27 jurisdiction. *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 691 (9th Cir. 1998). 28

1 U.S.C. § 1447(e) provides that “[i]f after removal the plaintiff seeks to join additional  
2 defendants whose joinder would destroy subject matter jurisdiction, the court may deny  
3 joinder, or permit joinder and remand the action to the State court.” “The language of §  
4 1447(e) is couched in permissive terms and it clearly gives the district court the discretion  
5 to deny joinder.” *Newcombe*, 157 F.3d at 691. In exercising its discretion, the Court  
6 should consider:

7 (1) whether the would-be-defendants are necessary for just adjudication of  
8 the controversy, (2) whether the plaintiff still could bring an action in state  
9 court against the putative defendants, (3) whether there has been any  
10 unexplained delay in joinder, (4) whether it appears the plaintiff is seeking  
11 to destroy jurisdiction, (5) the apparent merit of the claims against the new  
12 parties, and (6) whether the plaintiff would suffer prejudice without the  
13 joinder of the defendants.

14 *See, e.g., Bonner v. Fuji Photo Film*, 461 F. Supp. 2d 1112, 1119-20 (N.D. Cal. 2006).

15 In this case, Plaintiffs filed the Amended Complaint and joined Mr. Hurd and Mr.  
16 Miller, who Plaintiffs allege are both citizens of Washington. *See* Amended Complaint,  
17 ¶¶ 2.7, 2.8. The joinder of these two people destroys the subject matter jurisdiction of the  
18 Court because there is no longer complete diversity between the parties. Defendants  
19 contend that Plaintiffs added these two defendants only to destroy diversity and seek a  
20 remand back to state court. The fact that Plaintiffs filed the Amended Complaint and  
21 motion to remand shortly thereafter supports Defendants’ contention. Moreover, the  
22 Amended Complaint is so conclusory that it is impossible to properly evaluate all of the  
23 factors set forth above.

24 Based on the factors the Court is able to currently evaluate, the Court finds that the  
25 current state of the record counsels against allowing the amendments. First, the Court is  
26 not convinced that Mr. Hurd and Mr. Miller are necessary for the just adjudication of this  
27 controversy. It appears that Plaintiffs may still subpoena these individuals to testify at  
28 trial, but the record does not support Plaintiffs’ contention that they are “necessary” for  
proper adjudication of Plaintiffs’ causes of action.

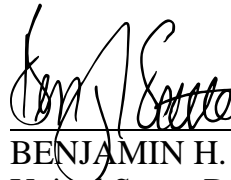
1 Second, the Court is unable to consider the apparent merit of the claims against  
2 Mr. Hurd and Mr. Miller. Thus, a properly briefed motion to amend the pleading would  
3 shed light on the issue of whether Plaintiffs have meritorious claims against Mr. Hurd and  
4 Mr. Miller.

5 Finally, the Court finds that Plaintiffs will not be prejudiced by the striking of its  
6 amended complaint. This action is in its infancy and Plaintiffs will not be prejudiced by  
7 the delay of the consideration of a properly briefed motion to amend.

8 **IV. ORDER**

9 Therefore, it is hereby **ORDERED** that Plaintiffs' motion to remand (Dkt. 15) is  
10 **DENIED** and Defendants' motion to strike the amended complaint (Dkt. 16) is  
11 **GRANTED**. The Clerk is directed to **STRIKE** the amended complaint (Dkt. 14) and  
12 Defendants Delta Environmental Consultants, Inc., Defendants Hurd and Miller are  
13 hereby **DISMISSED without prejudice**.

14 DATED this 5<sup>th</sup> day of July, 2011.

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18 BENJAMIN H. SETTLE  
19 United States District Judge  
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